IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 598 of 1984

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANDVI TALUKA SAHAKARI KHARID VECHAN SANGH LTD

Versus

AMINABIBI NURKHAN KAZI

Appearance:

1. Civil Revision Application No. 598 of 1984

MS SONAL D VYAS for Petitioner

MR NAGIN N GANDHI for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/09/2002

ORAL JUDGEMENT

This Revision Application preferred under section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent

Act"] arises from the judgment and order dated 8th February, 1984 passed by the learned Extra-Assistant Judge, Surat in Regular Civil Appeal No. 326 of 1982. The petitioner before this Court is the Respondent-Defendant.

The petitioner [hereinafter referred to as, "the Defendant"] is the tenant of the part of the premises [hereinafter referred to as, "the suit premises"] bearing No. 2/4/43, situated at Mandvi, Surat. The defendant is a Co-operative Society. The suit premises was leased to the defendant for a monthly rent of Rs. 85/= for the purpose of storage of goods. The respondent no. 1 [since deceased as represented through her heirs and legal representatives] was the owner of the suit premises. The defendant was in arrears of rent since 1st March, 1978. The plaintiff under Notice dated 7th October, 1978 terminated the tenancy of the defendant and demanded the amount of arrears of rent. Inspite of the receipt of the said notice, the defendant neglected to remit the amount of arrears of rent or to hand-over the possession of the suit premises.

The plaintiff, therefore, filed Regular Civil Suit No. 34 of 1979 in the Court of Civil Judge [JD], Mandvi. The suit was contested by the defendant by filing written statement [Exh. 12]. In the said written statement, the defendant took the plea raising dispute as to the standard rent of the suit premises. The suit was tried by the learned Civil Judge, Mandvi. The learned trial Judge under the impugned judgment and order dated 31st August, 1982 determined the standard rent of the suit premises to be Rs. 85/= per month. As regard the arrears of rent, the learned Judge was of the opinion that since the issue as to the standard rent was not determined until the date of the judgment, the defendant was protected by section 12 (3) (b) of the Rent Act. The Court further observed that by the date of the judgment, the defendant had deposited entire amount of arrears of rent till the date of the judgment. The learned Judge therefore, under the judgment and order dated 31 August, 1982 dismissed the suit.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No. 326 of 1982 in the Court of District Judge, Surat. The appeal was heard by the learned Extra-Assistant Judge. The learned Judge under the impugned judgment and order dated 8th February, 1984 allowed the appeal. The learned Judge fixed the standard rent at Rs. 75/=, however, held that the case was covered by section 12 (3)(a) of the Rent Act and was

pleased to pass the decree for possession of the suit premises and the arrears of rent. Feeling aggrieved, the defendant has preferred the present Revision Application.

Learned advocate Ms. Vyas has submitted that the Court below has erred in passing the decree for possession of the suit premises. She has submitted that the standard rent was determined by the Court below on the date of the judgment. Until then, the defendant should be held to be protected by section 12 (3)(b) of the Rent Act. She has strenuously urged that the defendant did raise the dispute as to the standard rent in the written statement. Such a plea having been taken by the defendant, the case would be taken out of the purview of section 12 (3)(a) of the Rent Act. In support of her contention, she has relied upon the judgment of the Hon'ble Supreme Court in the matter of Ibrahim Abdulrahim Shaikh (dead) by L.Rs. v. Krishnamorari Sripatlal Agarwal (dead) by L.Rs. [1994 (2) GLR 1591].

Mr. Gandhi has contested the Revision Application. He has submitted that in any view of the matter, the defendant did not tender the amount of arrears of rent before the trial Court nor did the defendant tender the rent regularly as and when it fell due; either pending the trial, pending the appeal or pending this Revision Application. The decree for possession, therefore, requires to be confirmed.

Be it noted that it is not disputed that the rent for the suit premises was payable by month and that on the date of the suit notice [Exh. 52], the defendant was in arrears of rent for six months and more. It is also not disputed that the suit notice was not responded to by the defendant. In answer to the suit notice, the defendant did not pay the amount of arrears of rent demanded nor did it vacate the suit premises. The defendant did not even raise dispute as to the standard rent either by replying to the suit notice or by making application as envisaged under section 11 (3) of the Rent Act. Thus, all the conditions specified under section 12 (3)(a) of the Rent Act were satisfied. In my opinion, therefore, the case should fall within the purview of section 12 (3)(a) of the Rent Act and the decree for possession should necessarily follow.

As for the dispute as to the standard rent raised in the written statement for the first time, the Courts are consistent that raising such dispute in the written statement at a belated stage i.e. after expiration of one month from the date of receipt of the notice, given

under sub section (2) of Section 12 of the Rent Act, is of no consequence. Reliance can be had to the judgments of this Court in the matters of Shah Ambalal Chhotalal v. Shah Babaldas Dahyabhai [3 GLR 625]; of Ramniklal Dwarkadas Modi v. Mohanlal Laxmichand & Ors. [18 GLR 32]; of Rafikbhai Husainbhai Chauhan vs. Soni Ghanshyambhai Popatlal [2001 (2) GLH UJ 3] and of the Hon'ble Supreme Court in the matter of Shah Dhansukhlal Chhaganlal v. Dalichand Virchand Shroff (dead) by his Legal Representatives [AIR 1968 SC 1109].

Ms. Vyas has also relied upon the judgments of this Court in the matters of Naranbhai Nathabhai Koli v. Modhia Panalal Maganlal [23 (2) GLR 98] and of Rupaben Wd/o. of Kaththu Dhanji & Anr. v. Babubhai Deojibhai [24 (1) GLR 263]. But, the ruling of this Court in these two judgments, in view of the above referred judgments, cannot be said to be a good law.

I have in the matter of the Edward Washing Company v. Bai Ammaben Suleman [Civil Revision Application No. 1670 of 1983 :: Decided on 5th September, 2002] held that the above referred judgments in the matters of Naranbhai Nathabhai Koli v. Modhia Panalal Maganlal [23 (2) GLR 98] and of Rupaben Wd/o Kaththu Dhanji & Anr. v. Babubhai Deojibhai [24 (1) GLR 263] in so far as they lay down that a valid dispute as regards the standard rent can be raised by raising necessary plea in the written statement so as to attract the protection of section 12 (3)(b) of the Rent Act are per incurium.

Even the judgment in the matter of Ibrahim Abdulrahim Shaikh {Supra} relied upon by Ms. Vyas lays down the same principle. It does lay down that, "there is no limitation prescribed for making application under section 11 [3] of the Rent Act. But that is immaterial since the defendant did not make such an application at all." What the Court has held is, "..If he fails to dispute and omits to pay the arrears of rent within one month from the date of receipt of the notice, he became liable to be evicted under section 12 (3)(a) of the Act. What this Court, therefore, appears to have intended was that the tenant should dispute the standard rent or permitted increases within one month from the date of receipt of the notice and then file the application under section 11 (3)." Thus, it is apparent that the emphasis is on raising of the dispute as to the standard rent or permitted increases within one month from the date of receipt of the suit notice. Such dispute may be raised by replying to the notice. i.e., it is not essential

that such dispute be raised by making application under section 11 (3) of the Rent Act within such one month. Indisputably, in the present case, no such dispute was raised until expiration of the period of one month from the date of receipt of the suit notice. The defendant, thus, has forfeited protection conferred under section 12 (3)(b) of the Rent Act.

Mr. Gandhi has relied upon the judgment of the Bombay High Court in the matter of Venkatrao Anant Pai v. Narayanlal Bansilal [1968 B.L.R p-607]. Mr. Gandhi has particularly relied upon the observation that, "..If the standard rent is fixed and is pending in revision before the District Court, High Court or in appeal before the Supreme Court, the tenant must continue to pay the standard rent then determined and increases as determined by the operative judgment and if he does not do so, ss. 11 (4) and 12 (3)(b) read with the Explanation are not satisfied and he is not entitled to the protection."

He has submitted that neither pending the appeal before the District Court nor pending the Revision before this court, the tenant has been regular in tendering the rent due from month to month. Ms. Vyas has produced a statement showing the rent tendered by the defendant on various dates. A bare perusal of the said statement is sufficient to hold that the defendant had neglected to tender the rent pending the appeal before the District Court. Thus, the defendant had failed to satisfy the conditions mentioned in section 12 (3)(b) of the Rent Act so as to attract the protection under the said section. It may also be mentioned that even pending this Revision Application, the defendant has been negligent in paying/ tendering the rent regularly. No rent appears to have been tendered for the period from 1st November, 1995 till 31st March, 2000.

In above view of the matter, the Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

Learned advocate Ms. Vyas requests that the interim stay pending the revision application be continued for a period of six weeks. The request is granted. The interim stay operating, pending this Revision Application, be continued till 31st October, 2002 on the same terms and conditions. The sum of Rs. 1000/= deposited in this Court pursuant to the order dated 14th December, 2001 made on Misc. Civil Application No. 1455 of 2001 shall be transferred to the trial Court. The trial Court is directed to remit the

said sum of Rs. 1,000/= and any amount of rent tendered to and lying with the trial court to the present respondent-Nazeerabegam M. Maulavi, resident of Dhulia, Maharashtra.

[Miss R.M Doshit, J.]

Prakash*